

TITLE 38: FINANCIAL INSTITUTIONS
CHAPTER I: DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

PART 210
PAYDAY LOAN REFORM ACT

Section

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210.APPENDIX A Disclosure of 36% Rate Cap

AUTHORITY: Implementing and authorized by the Payday Loan Reform Act [815 ILCS 122].

SOURCE: Adopted at 29 Ill. Reg. 21008, effective December 16, 2005; amended at 35 Ill. Reg. 7343, effective April 21, 2011; amended at 37 Ill. Reg. 216, effective February 19, 2013; amended at 41 Ill. Reg. 12400, effective October 6, 2017; amended at 45 Ill. Reg. 4467, effective March 24, 2021; amended at 45 Ill. Reg. _____, effective _____.

Section 210.1 Definitions

"Act" means the Payday Loan Reform Act [815 ILCS 122].

"Affiliate" means any person or entity that directly or indirectly controls, is controlled by, or shares control with another person or entity. A person or entity has control over another if the person or entity has an ownership interest of 25% or more in the other.

"Allotment" means a portion of military pay that is regularly deducted or set-aside.

"Annual percentage rate" or "APR" is the cost of the consumer credit expressed as an annual rate which is disclosed to the consumer under applicable law.

"Calendar month" means that period from a given date in one month to the same numbered date the following month, and if there is no same numbered date, to the last day of the following month. When a period of time includes a month and a fraction of a month, the fraction of the month is considered to follow the whole month.

"Controlling Person" means a person, entity, or ultimate equitable owner that:

owns or controls, directly or indirectly, 10% or more of any class of stock of the license applicant;

is not a depository institution, as defined in Section 1007.50 of the Savings Bank Act [205 ILCS 205], that lends, provides, or infuses, directly or indirectly, in any way, funds to or into a license applicant, in an amount equal to or more than 10% of the license applicant's net worth;

controls, directly or indirectly, the election of 25% or more of the members of the board of directors of a license applicant; or

the Director finds influences management of the license applicant.

"Covered Dependent" with respect to a covered member, means the covered member's spouse; the covered member's child (as defined in 38 USC 101(4)); or an individual for whom the covered member provided more than one-half of the individual's support for 180 days immediately preceding an extension of consumer credit covered.

"Covered Military Member" or "Covered Member" means a member of the armed forces who is on active duty under a call or order that does not specify a period of 30 days or less or is on active Guard and Reserve Duty.

"Department" means the Department of Financial and Professional Regulation.

"Director" means the Director of the Division of Financial Institutions with the authority delegated by the Secretary.

"Division" means the Department of Financial and Professional Regulation-Division of Financial Institutions.

"Generally Accepted Accounting Principles" or "GAAP" means those adopted by the American Institute of Certified Public Accountants and Federal Accounting Standards Board and incorporated by reference in Section 210.15.

"Gross Monthly Income" means monthly income as demonstrated by official documentation of the income, including, but not limited to, a consumer's pay stub or receipt reflecting payment of government benefits, for the period 30 days prior to the date on which the loan was made.

"Hypothecate" means to pledge a security instrument without transfer of title.

~~"Installment Payday Loan" means a payday loan with a term agreed to by the parties of not less than 112 days and not exceeding 180 days and that is repayable in substantially equal and consecutive installments pursuant to Section 2-5(e) of the Act.~~

"John Warner Act" or "Warner Act" means 10 USC 987.

"Lender and Licensee" means a lender and licensee as defined in Section 1-10 of the Act.

"Loan Receivables" means the outstanding balances due on the loans of the licensee.

"Other Business Authorization" means the authorization in writing required by Section 3-5(g) of the Act to conduct another business in a location licensed under the Act that would not be contrary to the best interest of consumers.

"Missed Payment" means any failure to make a payment within ten days of the due date.

"Payday Lender License" means a license issued pursuant to the Act.

"Person" means an individual, partnership, association, joint stock association, corporation, or any other form of business organization.

"Predatory Loan Prevention Act Annual Percentage Rate" or "PLPA APR" is the cost of the consumer credit expressed as an annual rate and shall be calculated in accordance with 32 CFR 232.4(c), as in effect on the effective date of the act and as incorporated in 38 Ill. Adm. Code 215.

"Secretary" means the Secretary of the Department of Financial and Professional Regulation.

(Source: Amended at 45 Ill. Reg. _____, effective _____)

Section 210.2 Rate Cap Disclosure Notices

All applications for a loan must include a separate disclosure signed by the consumer that states: "A lender shall not contract for or receive charges exceeding a 36% annual percentage rate on the unpaid balance of the amount financed for a loan, as calculated under the Illinois Predatory Loan Prevention Act (PLPA APR). Any loan with a PLPA APR over 36% is null and void, such that no person or entity shall have any right to collect, attempt to collect, receive, or retain any principal, fee, interest, or charges related to the loan. The annual percentage rate disclosed in any loan contract may be lower than the PLPA APR." This disclosure shall be clear and conspicuous and shall be substantially similar to the form in Appendix A. A lender shall provide all disclosures required by this section in English and in the same language as the loan agreement.

(Source: Added at 45 Ill. Reg. _____, effective _____)

Section 210.16 Dual Licensure Limitation

In accordance with Section 3-5(g) of the Act, a licensee may obtain a license under the Consumer Installment Loan Act (CILA) for the exclusive purpose and use of making title secured loans, as defined in Section 15(a) of CILA and governed by 38 Ill. Adm. Code 110.300.

~~A licensee may continue to service CILA loans that were outstanding as of the effective date of the amendatory Act of 2010 (March 21, 2011) until the loans are repaid in full.~~

(Source: Amended at 45 Ill. Reg. _____, effective _____)

Section 210.70 Payments and Refunds

- a) All payments shall be credited on the account record as of the date received.
- b) When a payment is made in cash, the licensee shall give a receipt to the consumer. A receipt is not required for payment by check or money order unless requested by the consumer.
- c) When any loan contract is paid in full, the licensee shall refund any unearned finance charge. ~~Refunds of unearned finance charges for installment payday loans shall be paid to the consumer in cash, check or an Automated Clearing House (ACH) debit.~~ The unearned finance charge that is refunded shall be calculated based on a method that is at least as favorable to the consumer as the actuarial method, as defined by the federal Truth in Lending Act (15 USC 1601 et seq.) and Regulation Z, Appendix J (12 CFR 226 (2011); this incorporation by reference includes no subsequent dates or editions). The Department will post to its website a method of rebate calculation that conforms with Appendix J. Licensees may submit to the Department requests for approval of additional methods of rebate calculation that conform to Appendix J. All methods approved by the Department will be posted on the Department's website. The Department shall make its best efforts to respond to all licensee requests for use of a method. The use of any posted method will constitute compliance with the requirements of this subsection (c). The sum of the digits or rule of 78 method of calculating prepaid interest refunds is prohibited.

(Source: Amended at 45 Ill. Reg. _____, effective _____)

Section 210.72 Loan Terms

- a) No lender may make a payday loan to a consumer if the total of all payday loan payments coming due within the first calendar month of the loan, when combined with the payment amount of all of the consumer's other outstanding payday loans coming due within the same month, exceeds the lesser of:
 - 1) \$1,000; or
 - 2) in the case of one or more payday loans, 25% of the consumer's gross monthly income; ~~or~~

- 216
- 217 3) ~~in the case of one or more installment payday loans, 22.5% of the~~
- 218 ~~consumer's gross monthly income; or~~
- 219
- 220 4) ~~in the case of a payday loan and an installment payday loan, 22.5% of the~~
- 221 ~~consumer's gross monthly income.~~
- 222
- 223 b) A lender shall not contract for or receive charges exceeding a 36% PLPA APR on
- 224 the unpaid balance of the amount financed for a payday loan. Any loan with a
- 225 PLPA APR over 36% is null and void, such that no person or entity shall have
- 226 any right to collect, attempt to collect, receive, or retain any principal, fee,
- 227 interest, or charges related to the loan~~No lender may charge more than \$15.50 per~~
- 228 ~~\$100 loaned on any payday loan, or more than \$15.50 per \$100 on the initial~~
- 229 ~~principal balance and on the principal balances scheduled to be outstanding~~
- 230 ~~during any installment period on any installment payday loan. Except for~~
- 231 ~~installment payday loans and except as provided in Section 2-25 of the Act, this~~
- 232 ~~charge is considered fully earned as of the date on which the loan is made.~~
- 233
- 234 c) A lender may not take or attempt to take an interest in any of the consumer's
- 235 personal property to secure a payday loan.
- 236
- 237 d) A consumer has the right to redeem a check or any other item described in the
- 238 definition of payday loan under Section 1-10 of the Act issued in connection with
- 239 a payday loan from the lender holding the check or other item at any time before
- 240 the payday loan becomes payable by paying the full amount of the check or other
- 241 item, except that, if the item is a check or an ACH debit that could not be
- 242 cancelled before it was negotiated, the consumer shall be entitled to a full refund
- 243 of the amount obtained by the check or ACH debit within 5 business days after
- 244 the date of redemption.

245

246 (Source: Amended at 45 Ill. Reg. _____, effective _____)

247

248 **Section 210.75 Installment Payday Loans (Repealed)**

249

- 250 a) ~~Notwithstanding anything in the Act to the contrary, a payday loan shall also~~
- 251 ~~include any installment loan otherwise meeting the definition of payday loan~~
- 252 ~~contained in Section 1-10 of the Act, but that has a term agreed to by the parties~~
- 253 ~~of not less than 112 days and not exceeding 180 days (referred to in this Section~~
- 254 ~~as an "installment payday loan"). The following provisions shall apply:~~
- 255
- 256 1) ~~Any installment payday loan must be fully amortizing, with a finance~~
- 257 ~~charge calculated on the principal balances scheduled to be outstanding~~
- 258 ~~and be repayable in substantially equal and consecutive installments,~~

according to a payment schedule agreed to by the parties, with not less than 13 days and not more than one month between payments; except that, the first installment period may be longer than the remaining installment periods by not more than 15 days, and the first installment payment may be larger than the remaining installment payments by the amount of finance charges applicable to the extra days.

2) ~~An installment payday loan may be refinanced by a new installment payday loan one time during the term of the initial loan; provided that the total duration of indebtedness on the initial installment payday loan, combined with the total term of indebtedness of the new loan refinancing that initial loan, shall not exceed 180 days. For purposes of the Act, a refinancing occurs when an existing installment payday loan is paid from the proceeds of a new installment payday loan.~~

3) ~~In the event an installment payday loan is paid in full prior to the date on which the last scheduled installment payment before maturity is due, other than through a refinancing, no licensee may offer or make a payday loan to the consumer for at least 2 calendar days after the date on which the loan is paid in full.~~

4) ~~No installment payday loan may be made to a consumer if the loan would result in the consumer being indebted to one or more payday lenders for a period in excess of 180 consecutive days.~~

b) ~~No loan shall be made to a consumer who has an outstanding balance on 2 payday loans, except that, for a period of 12 months after the effective date of the amendatory Act of 2010 (effective March 21, 2011), consumers with an existing CILA loan may be issued an installment loan issued under the Act from the company from which their CILA loan was issued. For purposes of this Section, "company" means a person or legal entity.~~

e) ~~No lender may charge more than \$15.50 per \$100 on the initial principal balance and on the principal balances scheduled to be outstanding during any installment period on any installment payday loans.~~

d) ~~For purposes of determining the finance charge earned on an installment payday loan, the disclosed annual percentage rate shall be applied to the principal balance outstanding from time to time until the loan is paid in full, or until the maturity date, whichever occurs first. No finance charge may be imposed after the final scheduled maturity date.~~

- e) ~~The provisions of Section 2-40 of the Act concerning repayment plans do not apply to installment payday loans, except for Section 2-40(f).~~
- f) ~~In calculating finance charges under Section 2-5(c)(i) of the Act for an installment payday loan, when the first installment period is longer than the remaining installment periods, the amount of the finance charges applicable to the extra days shall not be greater than \$15.50 per \$100 of the original principal balance divided by the number of days in a regularly scheduled installment period and multiplied by the number of extra days determined by subtracting the number of days in a regularly scheduled installment period from the number of days in the first installment period.~~
- g) ~~No installment payday loan may be made to a consumer if the loan would result in the consumer being indebted to one or more payday lenders for a period in excess of 180 consecutive days. The term "consecutive day" does not include the date on which a consumer makes the final installment payment.~~

(Source: Repealed at 45 Ill. Reg. _____, effective _____)

Section 210.200 Hearing Procedures

- a) Hearings
After receipt of a written request for a hearing, the Director shall send a Notice of Hearing to the respondent requesting the hearing, by certified mail, at least 10 days prior to the date set for the hearing. The notice shall include the date and the time and place of the hearing to review the propriety of any administrative actions taken pursuant to the Act.
- b) The Director may designate, in writing, a Hearing Officer who shall have the minimum qualification of being licensed to practice law in Illinois. The Hearing Officer may be disqualified for bias or conflict of interest. The Hearing Officer shall have the authority to:
 - 1) Examine or permit examination of any witness under oath;
 - 2) Determine the order of appearance of all parties;
 - 3) Receive all evidence and testimony and rule on its admissibility, as well as require the production of any relevant document or witness;
 - 4) Rule on objections to evidence;

- 343 5) Make a written report with recommendations to the Director that shall
344 include findings of fact and conclusions of law. Findings of fact shall be
345 based exclusively on the evidence and on matters officially noticed; and
346
347 6) Require any party or the party's attorney to provide proposed findings of
348 fact or conclusions of law for consideration in the Hearing Officer's report.
349

350 c) General Provisions
351

- 352 1) Delivery of notice shall be deemed complete when the notice is deposited
353 in the United States mail.
354
355 2) A continuance shall be granted for good cause by the Hearing Officer. For
356 the purposes of this subsection (c)(2), good cause shall require the
357 respondent to demonstrate real and compelling need for additional time. It
358 shall include, but not be limited to, illness, service in the armed forces, etc.
359 The continuance shall be:
360
361 A) In writing and signed by the respondent or the respondent's
362 attorney and shall state the reasons for the request.
363
364 B) Delivered to the Hearing Officer at least three days prior to the
365 scheduled hearing.
366
367 3) The licensee shall bear all the costs of the hearing.
368
369 4) A court reporter will be present and considered as part of the costs of the
370 hearing.
371

372 d) Conduct of Hearings
373

- 374 1) The Hearing Officer shall open the hearing by presenting for the record his
375 letter of authorization from the Director.
376
377 2) The rules of evidence and privilege as applied in civil cases in the circuit
378 courts of this State shall be followed. The Hearing Officer may admit
379 evidence not admissible under circuit court rules if that evidence may be
380 relevant to the case.
381
382 3) The Hearing Officer may, on his own motion or the motion of one of the
383 parties, take notice of matters of which the circuit courts of this State may
384 take judicial notice. Notice may be taken of generally recognized
385 technical or scientific facts within the Division's specialized knowledge if

parties are notified, before or during the hearing, and shall be afforded an opportunity to contest the material so noticed. The burden of opposing any material admitted upon notice shall be upon the party so opposing.

4) Failure of the respondent to attend the hearing shall result in dismissal of the respondent's petition and an entry of a default judgment against the respondent. Within 30 days after dismissal of the respondent's petition, the respondent may petition the Hearing Officer for reconsideration if the respondent can establish that his or her failure to attend was caused by events beyond his or her control and he or she exercised due diligence to attend or seek a continuance.

5) The record of any hearing shall include:

- A) All pleadings and evidence received, whether admitted or excluded;
- B) A statement of all matters officially noticed;
- C) All offers of proof and objections and rulings on those offers;
- D) All proposed findings and exceptions;
- E) Any decision, opinion, or report by the Hearing Officer;
- F) Any evidence excluded by the Hearing Officer, even though that evidence is not used in the determination of the claim;
- G) A proceeding transcript that shall be recorded by a means that adequately ensures the preservation of the testimony.

6) Within 60 days after the hearing or the receipt of all necessary documents, the Hearing Officer shall report to the Director.

7) Within 30 days after receiving the report of the Hearing Officer, the Director shall issue his or her decision, which shall be served on the respondent by registered or certified mail, return receipt requested. Copies of the Hearing Officer's report to the Director are available upon written request.

e) Petition to Reconsider

- 1) Within 30 days after receipt of the Director's decision, the respondent may petition the Director for reconsideration based upon a verified petition. An affidavit shall accompany the petition, stating that the decision was against the preponderance of the evidence, was contrary to law, or was arbitrary or capricious, or is affected by newly discovered evidence not in existence at the time of the initial hearing or that could not have been discovered using due diligence at that time.
- 2) The Director shall determine within 15 days whether to reconsider the case. If the Director determines after reading the affidavit that one or more of the conditions outlined in subsection (e)(1) has been alleged by the respondent, a hearing may be held and shall be limited to only those issues raised in the petition to reconsider. If reconsideration is denied, the Director's initial decision shall be the final administrative decision of the Division.

(Source: Amended at 45 Ill. Reg. _____, effective _____)

Section 210.250 Gross Monthly Income Verification

- a) Prior to making a loan under the Act, the licensee must obtain from the consumer one or more of the following types of documentation to verify the gross monthly income of the consumer as required by Section 2-5(e) of the Act.
 - 1) A copy of the consumer's official pay stub or official payroll receipt, for the period 30 days prior to the date on which the loan is made.
 - 2) A copy of the consumer's official receipt documenting payment of government benefits, for the period 30 days prior to the date on which the loan is made.
 - ~~3) A copy, from the current or prior year, of the consumer's State or federal tax returns or the consumer's W-2 or 1099 forms.~~
 - ~~4) Signed and verifiable documentation prepared by the source of the income.~~
 - 35) A contract that provides for funds to have been paid to the consumer within the 30 days prior to the date on which the loan is made, and documentation reflecting that the funds have actually been paid.
 - 46) Other documentation as approved by the Director.

- b) If two or more persons jointly apply for credit, each must list income on the application, and the aggregate of all borrowers' income may be taken into account when calculating the maximum gross monthly income under Section 2-5(e) of the Act. The licensee must obtain documentation of gross monthly income pursuant to this Section with respect to all applicants.

(Source: Amended at 45 Ill. Reg. _____, effective _____)

Section 210.260 Certified Database/Commercially Reasonable Method of Verification

- a) Certified Database. In order to certify a consumer reporting service as a commercially reasonable database pursuant to the Act, the provider must comply with the following provisions:
- 1) Single, centralized consumer reporting service to track payday loan transactions made by licensees under the Act on a real time basis.
 - 2) Real time access by the Division and licensees to verify that individual consumers are eligible for a loan pursuant to the requirements of the Act.
 - 3) All requirements in Section 2-15 of the Act regarding verification.
 - 4) Customer support to licensees and consumers during regular business hours.
 - 5) Develop and provide training to Division staff and licensees under the Act prior to implementation and on an ongoing basis.
 - 6) Provide a charge-back methodology to licensees not to exceed \$1 for each search to determine eligibility of the consumer for a loan under the Act.
 - 7) All requirements of Section 2-17 of the Act regarding qualifications and bonding.
 - 8) All confidentiality and privacy requirements of the Act and required by law.
- b) The certified consumer reporting service may charge a verification fee not to exceed \$1 upon a loan being made or entered into the database. The certified consumer reporting service shall not charge any additional fees or charges.
- c) Additional Database Providers. As technology advances permit, the Division may certify additional database providers in the future. Any additional database

provider must guarantee, to the satisfaction of the Director, that the additional database can interface with any other certified database to provide a single point of verification for licensees and the Division to determine consumer eligibility for a loan pursuant to the Act and to provide a single source for reporting purposes.

d) Licensee Input into Database

1) The licensee shall input the following information into the certified database to determine whether the consumer is eligible for a loan pursuant to the requirements of the Act:

- A) Consumer's Social Security Number or Alien Identification Number or other official identification number, as approved by the Patriot Act, issued by a foreign government or government in the United States;.
- B) Consumer's gross monthly income.
- C) Any additional information required by the Director~~database provider~~.

2) On the same day the payday loan is made, the licensee shall update the certified database with the following information:

- A) Consumer's Social Security Number or Alien Identification Number~~;~~
- B) The principal amount of the loan~~;~~
- C) The total of payments;~~amount of the loan.~~
- D) The term of the loan~~;~~
- E) The security~~Security~~ accepted for the loan~~;~~
- F) Zip code of consumer;
- G) Date of the loan;
- H) APR;
- I) PLPA APR;

J) Whether the loan is a rollover or a prior loan; and

KF) Any additional information required by the Director~~database provider~~.

3) On the same day any loan transaction is made, the licensee shall input the information into the certified database~~The licensee shall update the certified database with the information required by the database on the same day the loan transaction is made~~, including, but not limited to, the following transactions:

A) Electing a repayment plan~~;~~

B) Paying the loan in full~~;~~~~including the refinancing of an installment payday loan as permitted under Section 2-5(c) of the Act.~~

C) Closing of the loan;~~Making a partial payment.~~

D) Depositing ~~a~~the check used as security for the loan~~;~~

E) Canceling a loan within 48 hours as allowed by the Act~~;~~

F) Recording an NSF return on a previously closed transaction~~;~~

G) Return of security~~;~~

H) Writing of the loan;

I) Any missed Payment;

J) Any default other than a Missed Payment; and

KH) Any other transaction as required by the Director~~database provider~~.

e) Beginning June 1, 2011, licensees must comply with the requirements of subsection (d) of this Section.

f) All personally identifiable information regarding any consumer obtained by way of the certified database and maintained by the Department is strictly confidential and shall be exempt from disclosure under subsection (c) of Section 7 of the Freedom of Information Act.

(Source: Amended at 45 Ill. Reg. _____, effective _____)

Section 210.APPENDIX A Disclosure of 36% Rate Cap

DISCLOSURE OF 36% RATE CAP

A lender shall not contract for or receive charges exceeding a 36% annual percentage rate on the unpaid balance of the amount financed for a loan, as calculated under the Illinois Predatory Loan Prevention Act (PLPA APR)

Any loan with a PLPA APR over 36% is null and void, such that no person or entity shall have any right to collect, attempt to collect, receive, or retain any principal, fee, interest, or charges related to the loan.

The annual percentage rate disclosed in any loan contract may be lower than the PLPA APR.

Applicant Signature

Co-Applicant Signature (If Applicable)

(Source: Added at 45 Ill. Reg. _____, effective _____)